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No. 91-1108

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

DEKALB BOARD OF REALTORS, INC., and METROPOLITAN MULTI-LIST, INC.,

Petitioners,

v.

FLETCHER L. THOMPSON, and EMPIRE REAL ESTATE BOARD, INC.,

Respondents.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF *AMICUS CURIAE* OF THE NATIONAL ASSOCIATION OF REALTORS IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI

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BRIEF *AMICUS CURIAE* OF THE NATIONAL ASSOCIATION OF REALTORS IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI

The National Association of Realtors respectfully submits this brief as *amicus curiae* in support of the petition for writ of certiorari filed by the DeKalb Board of Realtors, Inc. and Metropolitan Multi-List, Inc. The written consent of all parties has been obtained and filed with the Clerk in accordance with Supreme Court Rule 37.2.

INTEREST OF *AMICUS CURIAE*

The National Association of Realtors ("NAR") is a private not-for-profit professional association comprised of fifty-four State and Territorial Associations of Realtors, approximately 1,800 local Boards of Realtors (hereinafter "Boards"), and over 720,000 individual Realtors and Realtor-Associates engaged in all facets of the real estate business, including brokerage, appraising, management, and counseling.[1] Founded in 1908, NAR's purposes are to promote the highest and best use of the land, protect private ownership of real property and establish high and uniform professional standards of real estate practice.

When NAR was founded, multiple listing services ("MLSs") did not exist in their current form and cooperation among brokers was rare and narrowly circumscribed. Among NAR's objectives when it created the Realtors Code of Ethics in 1913 was to foster inter-broker cooperation, which it made an express obligation of the Code to which all NAR members are required to subscribe.[2] For nearly a century, NAR has encouraged broker cooperation, primarily through the promotion of multiple listing services as a Board service. Today, nearly two-thirds of NAR's member Boards operate MLSs for the benefit of their members.

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[1] The terms "Realtor®", "Realtors®" and "Realtor-Associate®" are registered collective membership marks that identify real estate professionals who are members of the National Association of Realtors and subscribe to the Realtors Code of Ethics.

[2] The Articles of the Realtors Code of Ethics are reproduced as an Appendix to this brief.

Nearly all Boards that operate MLSs require broker participants in the service to become Board members.[3] This requirement ensures that all MLS participants have agreed to adhere to the national Realtors Code of Ethics promulgated by NAR, and submit to uniform adjudicatory procedures if an ethics charge, or arbitration request, is made against the participant.

In this case, the court of appeals held that a Board's refusal to grant MLS participation privileges to a broker who is unwilling to join a Board of Realtors could constitute a group boycott or tying arrangement in violation of the Sherman Act, 15 U.S.C. § 1 *et seq.* This decision conflicts with numerous federal and state court decisions holding that Board MLSs need not provide MLS participation to brokers who simply refuse, for whatever personal reasons, to become Board members.

If permitted to stand, the court of appeals' ruling will undercut the settled expectations of Boards and individual real estate brokers nationwide. Furthermore, the membership requirement at issue in this case has been extensively reviewed by the Antitrust Division of the Justice Department, which has never once suggested that a Board membership requirement as a condition of access to a Board MLS is, standing alone, an unreasonable trade restraint.

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[3] Boards in California do not impose this requirement because it was found to violate the California antitrust laws. See *Glendale Board of Realtors v. Hounsell*, 139 Cal. Rptr. 830 (Cal. Ct. App. 1977).

BACKGROUND

Nearly 1,000 Boards currently operate MLSs to enhance the professionalism, competitiveness, and efficiency of the real estate and real estate brokerage markets throughout the United States. To understand how Board MLSs increase consumer welfare, it is necessary to consider: (1) the origins of multiple listing, (2) the emergence of NAR and the Realtors Code of Ethics, (3) NAR's support services, and (4) NAR's antitrust compliance program.

1. The Origins of Multiple Listing

MLSs have their origins in the late nineteenth century when real estate brokers began to form "real estate exchanges." In an exchange, a broker with a listing contacted other brokers who might be working with buyers interested in the listed property. Similarly, a broker working with a buyer would contact other brokers seeking listings meeting the buyer's specifications. In small markets where real estate brokers knew each other's reputation, the exchanges improved the efficiency of the real estate brokerage business. See generally, Davies, *Real Estate in American History*, 4-5, 20-27 (1958).

As real estate markets broadened and more brokers competed for available listings, brokers became reluctant to share listing information with other brokers whose business reputations they did not know. This reluctance was justified. Brokers could abuse invitations to cooperate by contacting sellers to persuade them to shift the listing to the other broker. Brokers might intentionally or negligently misrepresent the condition of the property to pro-

spective purchasers, and create legal liability for the listing broker or the seller. Other brokers might secretly acquire the listed property for their own account, quickly resell it at a profit, and unlawfully deprive the seller of the fair value of the property.

Similarly, brokers dealing with listing brokers with whom they were unfamiliar ran the risk of arbitrary refusals by listing brokers to pay them if they successfully procured a buyer for the listed property. Alternatively, listing brokers might withhold an offer procured by another broker until the listing broker's own agent procured a competing offer that the seller would then be induced to accept.

At the turn of the century, industry leaders realized that the real estate brokerage business could not rid itself of fraud, corruption and abusive self-dealing unless two things happened. First, real estate brokers must become more honorable and professional in their dealings with customers, clients, and each other. Second, a system was needed to encourage listing brokers to cooperate with other brokers to achieve the client's objective of a prompt sale at a fair price.

By offering the unsuccessful competitor for the listing an opportunity to participate in, and profit from, the marketing and sale of the property, the successful listing broker enhances the likelihood the property will be sold during the listing term. At the same time, an offer of cooperation encourages competing brokers to market the listed property, rather than undermine the listing broker's efforts with the hope of securing the listing once the seller becomes frustrated with the listing broker's inability to sell the property.

2. The Emergence of NAR and the Realtors Code of Ethics

Various real estate exchanges around the country united in 1908 to form the National Association of Real Estate Exchanges, which later became the National Association of Real Estate Boards and eventually NAR. The first mission of NAR's predecessor organizations was to create a Realtors Code of Ethics that would elevate the real estate brokerage business to a profession. The organizations' objective was to eliminate the perception of real estate brokers as speculators owing duties to no one but themselves. To this end, the Realtors Code of Ethics was adopted in 1913. The Code recast the real estate broker as a fiduciary owing duties of loyalty and fidelity to clients who entrust their property to the broker for sale or rent on terms and conditions most advantageous to the client.

To induce real estate brokers to become fiduciaries, NAR also promoted the exclusive listing of real estate. This type of listing induces the greatest degree of effort and commitment from brokers because brokers are assured that they will earn a commission if the property is sold during the listing term. But the number of agents authorized to market an exclusive listing is limited to those affiliated with the listing broker. This problem of limited market exposure is solved, however, if brokers cooperate with one another in the marketing of the property once the exclusive listing agreement is signed.

For these reasons, a third major objective of NAR in its efforts to professionalize the real estate brokerage business was to promote inter-broker cooperation. NAR promoted broker cooperation in two ways. First, it imposed upon its member Realtors an ethical obligation to utilize the services of other brokers on exclusively listed

property whenever such use was in the best interests of the client. This obligation is found today in Article 22 of the Realtors Code of Ethics, and applies to all Realtors whether or not they are MLS participants.

Second, it encouraged Boards to form MLSs to permit Board members to cooperate with each other on a blanket basis, rather than through bilateral arrangements from which smaller competitors or new market entrants were typically excluded. By making the MLS a Board service, NAR ensured that MLS participation was available to all competitors in the market, and not only the large and established firms.

Together, the rise of multiple listing and the emergence of NAR and its Code of Ethics dramatically increased the volume and efficiency of real estate transactions. See FTC Staff Report, *The Residential Real Estate Brokerage Industry* 92-93, (1983). By the 1920s, multiple listing had become the predominant way of selling real estate in the United States. Today, the vast majority of MLSs are operated by Boards of Realtors.

Although independent MLSs also exist, they are not, on average, nearly as successful as Board MLSs. *Id.* at 117.[4] Significantly, many independent MLSs have found it advantageous to impose their own Realtor membership requirements despite their independence from a Board of Realtors. The FTC staff found in their 1983 study of the real estate brokerage industry that 35% of independent

[4] See Austin, *Real Estate Boards and Multiple Listing Systems as Restraints of Trade*, 70 Colum. L. Rev. 1325, 1329 (1970) ("Because of its many ancillary services . . . a real estate board is more capable of assuring complete cooperation among participants than would be possible under an independent multiple listing system.").

MLSs require Realtor membership as a condition of participation. *Id.* A majority of independent MLSs have also conformed their bylaws, rules and policies to NAR guidelines. *Id.* These figures vividly demonstrate the importance of Realtor membership and adherence to the Code to the successful operation of an MLS.

3. NAR's Support Services

Besides the Code of Ethics itself, NAR provides Boards and their MLSs with numerous support services relating to MLS operations and Code of Ethics enforcement. These nationally developed policies and procedures avoid duplication of efforts by each Board, foster confidence in the system, and promote fair and uniform results.

For example, NAR provides Boards with extensive policy guidance on MLS operations. See NAR, *Handbook on Multiple Listing Policy* (5th ed. 1991). This guidance includes forms, policy statements, and suggested bylaws, rules and regulations. NAR also furnishes Boards with Official Interpretations and Standards of Practice that interpret the Articles of the Code of Ethics. See NAR, *Interpretations of the Code of Ethics* (1990). Like the Code itself, these Interpretations and Standards are binding upon each Board. Many Interpretations and Standards involve the application of the Code to inter-broker cooperative relationships.

Further, NAR provides Boards with uniform procedures for handling disputes. Under these procedures, each Board operates an adjudicatory process for ethics charges and another for requests for arbitration. The ethics process is used to determine whether the Realtors Code of Ethics has been violated. The arbitration process is used to resolve disputes between brokers concerning entitlement to

a commission. In both types of proceedings, matters are adjudicated by volunteer panels of local Realtors. See NAR, *Code of Ethics and Arbitration Manual* (1991); NAR, *Professional Standards Training Manual* (1991).

4. NAR's Antitrust Compliance Program

A significant number of residential real estate transactions involve properties disseminated through multiple listing services. To ensure that a Board MLS provides all licensed real estate brokers a fair opportunity to participate, NAR policy strictly forbids any Board from adopting arbitrary or unreasonable criteria for Board membership. *See* NAR Bylaws, Art. I, sec. 2.[5]

NAR prohibits discriminatory Board membership criteria, in part, because of consultations with the Antitrust Division of the Justice Department in the early 1970s. At that time, the Justice Department was involved in litigation against over a dozen Boards of Realtors.[6] See generally NAR, *Antitrust and Real Estate*, ch. 2 (1982). Although the lawsuits involved challenges to a number of industry practices, not one of the suits challenged the requirement that participation in a Board MLS be limited

[5] In addition, NAR policy requires each Board that operates an MLS to make the MLS available to all Board members upon payment of a reasonable, cost-based fee. NAR *Handbook on Multiple Listing Policy*, §§ 8.2, 8.4 (5th ed. 1991).

[6] See, *e.g.*, *United States v. Greater Pittsburgh Board of Realtors*, 1973-1 Trade Cases ¶ 74,454 (W.D. Pa. 1973); *United States v. Real Estate Board of Metropolitan St. Louis*, 1973-2 Trade Cases ¶ 74,744 (E.D. Mo. 1973); *United States v. Los Angeles Realty Board*, 1973-1 Trade Cases ¶ 74,366 (C.D. Cal. 1973); *United States v. Long Island Board of Realtors*, 1972 Trade Cases ¶ 74,068 (E.D.N.Y 1972); *United States v. Memphis Board of Realtors*, 1972 Trade Cases ¶ 74,056 (W.D. Tenn. 1972) (consent decrees).

to Board members so long as Board membership is available to all brokers on reasonable and non-discriminatory terms.

In the midst of this litigation, NAR representatives met with Justice Department officials to develop principles to ensure Board antitrust compliance. *Antitrust and Real Estate, supra*, Ch. 2, at 8-10. The result was two key NAR policies that remain in effect today. First, NAR's "Fourteen Point Multiple Listing Policy" identifies fourteen restrictions that a Board MLS may not adopt.[7] Second, NAR's "Membership Qualification Criteria" specifies the most rigorous standards that a Board may impose when admitting members.[8] To ensure that each Board adopted these policies, NAR initiated a nationwide antitrust compliance program through which NAR reviewed the governing documents and MLS rules of over 1600 Boards.[9] *Antitrust and Real Estate, supra*, ch. 2, at 8-10.

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[7] For example, a Board-operated MLS may not: fix, control, or recommend commission rates or fees for services rendered by members; make any rule prohibiting or discouraging cooperation with non-members; or reject any exclusive listing submitted by a member based on the quality or price of the listing. See NAR, *Handbook on Multiple Listing Policy*, Ch. 6, at 1-2 (5th ed. 1991). In addition, a Board's MLS may not require any one to participate in the MLS as a condition of Board membership. *Id.* at 7.

[8] As amended in February of 1991, the Membership Qualification Criteria are: (1) a valid real estate license; (2) a place of business within the Board's jurisdiction; (3) no record of official sanctions involving unprofessional conduct; (4) no recent or pending bankruptcy; (5) completed the Board indoctrination course; (6) agreement to abide by the Realtors Code of Ethics; and (7) agreement to abide by the Constitution, Bylaws, policy, and rules and regulations of the local Board, state association, and NAR.

[9] NAR continues to employ fifteen full-time staff people whose primary responsibility includes reviewing Board governing documents to ensure compliance with NAR policy.

As a consequence of these actions, the Justice Department settled its lawsuits against Boards and their MLSs. The resulting consent decrees reflect the understandings between the Department and NAR concerning Board conduct permitted under the antitrust laws. Significantly, many of the decrees expressly required the Boards to admit to membership any licensed applicant who met "reasonable and non-discriminatory written requirements for membership."[10] But none of the decrees required any Board to abandon the requirement that participants in the Board's MLS be Board members.[11]

Even after the consent decrees were finalized, the Justice Department continued to monitor the real estate brokerage industry. In particular, the Department conducted a nationwide compliance audit in 1974 and 1975 during which it reviewed the bylaws, rules, and other governing documents of over forty Boards. By that time NAR had required all of its member Boards to adopt reasonable and non-discriminatory membership policies in accordance with the NAR's Multiple Listing Policy and Membership Qualification Criteria. See *Antitrust and Real Estate*, *supra*, ch. 2 at 10-11. The compliance audit did not result in any new challenges against any Board of Realtors.[12]

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[10] See consent decrees cited in n. 6, *supra*.

[11] Indeed, the Department has expressly taken the position that even a Board subject to a consent decree may limit participant in its affiliated MLS to Realtors. See *O'Riordan v. Long Island Board of Realtors*, 707 F. Supp. 111, 113 (E.D.N.Y. 1989) (noting letter by Department of Justice to local Board to this effect).

[12] The Justice Department did bring subsequent challenges to the membership requirements of independent MLSs that were not affiliated with the NAR. See e.g., *United States v. Realty Multi-List, Inc.*, 629 F.2d 1351 (5th Cir. 1980).

REASONS FOR GRANTING THE PETITION

Amicus NAR endorses the petition. NAR submits this brief to underscore the fundamental importance of this case to brokers and Boards of Realtors nationwide.

NAR believes that this Court should review the Eleventh Circuit's decision for three reasons. First, the ruling below conflicts with this Court's decision in *Associated Press v. United States*, 326 U.S. 1 (1945), and with numerous federal and state court decisions upholding the membership requirement. Second, the decision below threatens to reduce the efficiency and procompetitive effects of hundreds of Board MLSs.

Finally, the decision undermines settled expectations of brokers and Boards across the country. It is fundamentally unfair to permit a single appellate court panel in private litigation to upset a system so carefully developed and so effective. It is therefore manifestly appropriate that if the Board membership requirement shall now be declared to be a Sherman Act violation, such a declaration should be made by this Court.

1. Ever since this Court's decision in *Associated Press v. United States*, 326 U.S. 1 (1945), the principle has been well-established that a membership association is not required to provide access to its services to non-members when association membership is available on reasonable and non-discriminatory terms. *Associated Press* involved an association bylaw that prohibited members from making pooled news items available to non-members. Judge Learned Hand held that this bylaw, standing alone, was not only permissible but "essential to the protection of the main purpose" of the association. 52 F. Supp. 362,

374 (S.D.N.Y 1943). *Id.* On appeal, this Court expressly affirmed this aspect of Judge Hand's decision. 326 U.S. at 22.

Like the Associated Press, an MLS involves an efficiency enhancing cooperative information exchange. In both situations, prohibiting non-members from access is an ancillary restraint that is "essential to the protection of the main purpose" of the organization. 52 F. Supp. at 374. Likewise, there is no anticompetitive "exclusion," as long as membership itself is available on reasonable terms.

As the petition demonstrates, the Fifth Circuit and four federal district courts have each applied *Associated Press* to the Board membership requirement and concluded that the requirement, standing alone, does not violate the federal antitrust laws.[13] In addition, two state supreme courts have each found that the Board membership requirement does not violate state antitrust laws patterned after the Sherman Act.[14] These courts have recognized that, as long as Board membership is reasonably available, a broker's purported "exclusion" from a Board's MLS is entirely "voluntary": All the broker must do to participate is "pay [the Board's] dues." *Pope v. Mississippi Real Estate Commission, et al.*, 872 F.2d 127, 130 (5th Cir. 1989); see also

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[13] *Pope v. Mississippi Real Estate Commission, et al.*, 872 F.2d 127 (5th Cir. 1989); *O'Riordan v. Long Island Board of Realtors, Inc.*, 707 F. Supp. 111 (E.D.N.Y. 1989); *Brown v. Indianapolis Board of Realtors*, 1977-1 Trade Cases ¶ 61,435 (S.D. Ind. 1977); *Martin-Trigona v. National Association of Realtors*, 1978-1 Trade Cases ¶ 61,915 (E.D. Ill. 1978); *Murphy v. Alpha Realty, Inc.*, 1978-2 Trade Cases ¶ 62,388 (N.D. Ill. 1978).

[14] *Pomanowski v. Monmouth County Board of Realtors*, 446 A.2d 83 (N.J.), *cert. denied*, 459 U.S. 908 (1982); *State v. Cedar Rapids Board of Realtors*, 300 N.W.2d 127 (Iowa 1981); *but cf. Marin County Board of Realtors v. Palsson*, 549 P.2d 833 (Cal. 1976).

Pomanowski v. Monmouth County Board of Realtors, 446 A.2d 83, 90 (N.J. 1982).

The decision below directly conflicts with these cases. Likewise, the decision conflicts with holdings of the First Circuit and one district court that the Board membership requirement is not a *per se* unlawful tying arrangement.[15] This Court should grant certiorari to resolve these conflicts and to clarify whether a Board with open membership criteria may lawfully require brokers to join the Board as a condition of participation in its MLS.

2. In analyzing the Board membership requirement, the Eleventh Circuit ignored *Associated Press* and each of the federal and state court decisions upholding that requirement. Instead, the court asked whether the Board membership requirement was "narrowly tailored" to its admittedly procompetitive goals. Because the court of appeals believed that a Board MLS could "easily impose" a set of professional standards directly upon its participants, it declared the Board's MLS participation rules to be unreasonable as a matter of law if the Board's MLS is a valuable competitive asset in a relevant real estate brokerage market. Pet. App. 27a-28a.

As the petition shows at pages 18-19, the Eleventh Circuit's "narrowly tailored" standard conflicts with other circuits' treatment of ancillary restraints. Even more fundamentally, however, this standard fails to consider the significant efficiencies created by the Board membership requirement. For example, the Board membership requirement:

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[15] *Wells Real Estate, Inc. v. Greater Lowell Board of Realtors, et al.*, 850 F.2d 803 (1st Cir.), *cert. denied*, 488 U.S. 955 (1988); *O'Riordan, supra*, 707 F. Supp. 111 (E.D.N.Y. 1989).

(a) prevents "free riding" by brokers who will utilize the Board's MLS, but will not support the Board's professional standards enforcement processes and other ancillary Board services that are funded from Board dues and are necessary to the efficient operation of the Board's MLS;

(b) avoids the potential costs to a Board of maintaining two distinct professional standards enforcement systems: one for enforcing MLS rules and regulations and another for enforcing the Realtors Code of Ethics; and

(c) increases the number of brokers willing to participate in the MLS by providing assurances that all participants have agreed to abide by the Code and that disputes will be adjudicated in a fair and uniform manner.

These efficiencies will be lost or significantly compromised if the lower court's "narrowly tailored" standard becomes the law.

Carried to its logical conclusion, the lower court's inquiry into whether the petitioners' MLS rules could be more "narrowly tailored" will force Boards that operate MLSs to endure constant and protracted antitrust litigation—not over whether the Board's MLS rules are, on balance, procompetitive—but whether it is possible for the Board to "narrow" further its MLS rules to accommodate the plaintiff and still maintain a functioning MLS.

MLSs can be operated under a variety of rules and regulations, often with similar procompetitive effects on a relevant real estate brokerage market. Therefore, a Board subject to the lower court's "narrowly tailored" standard will never be able to defend successfully a policy decision to operate in one procompetitive manner rather than

another. Dissenters will always be able to argue, or even prove, that the MLS could still function effectively under their preferred rules rather than the rules adopted by the directors of the Board or its MLS. Faced with this potential litigation onslaught, Boards may well be forced, at a minimum, to maintain different sets of substantive and procedural requirements for Realtors and non-member MLS participants, with the potential for conflicting adjudications and confusing choice of law and forum issues whenever disputes involve a Realtor and a non-member.

An equally possible outcome is that Boards will simply abandon their MLSs as too costly and burdensome to maintain. This is especially true if large Realtor firms determine that the benefits of participating in an MLS with non-member brokers no longer outweigh the risks, and they withdraw from MLS participation altogether.

3. For over eighty years, Boards of Realtors have required Board membership as a condition of MLS participation. This membership requirement has enabled Boards and NAR to increase the professionalism of real estate brokers, provide MLS access to the largest number of brokers, and, ultimately, expand dramatically the industry's output.

Furthermore, the Justice Department repeatedly targeted Boards for antitrust enforcement during the 1970s. Throughout this litigation, the Department never challenged the Board membership requirement per se. Instead, it simply required Boards to have "reasonable and non-discriminatory written requirements for membership" as this Court held in *Associated Press*.

The understandings reached between the Justice Department and NAR have been the benchmark for antitrust compliance in the real estate brokerage industry. Rely-

ing on these understandings, NAR developed its national Membership Qualification Criteria and Multiple Listing Policy. These policies, in turn, govern the MLS operations of nearly 1,000 of NAR's member Boards.

It would be particularly inequitable if the decision of one court unravels the carefully developed policies of NAR designed to enhance consumer welfare in the real estate brokerage industry throughout the country. The antitrust legality of the Board membership requirement is therefore a matter of critical national importance that this Court should resolve.

CONCLUSION

For the reasons stated above and the reasons stated in the petition, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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February 7, 1992

APPENDIX

CODE OF ETHICS OF THE NATIONAL ASSOCIATION OF REALTORS

Where the word Realtor is used in this Code and Preamble, it shall be deemed to include Realtor-Associates.

While the Code of Ethics establishes obligations that may be higher than those mandated by law, in any instance where the Code of Ethics and the law conflict, the obligations of the law must take precedence.

Preamble . . .
Under all is the land. Upon its wise utilization and widely allocated ownership depend the survival and growth of free institutions and of our civilization. Realtors should recognize that the interests of the nation and its citizens require the highest and best use of the land and the widest distribution of land ownership. They require the creation of adequate housing, the building of functioning cities, the development of productive industries and farms, and the preservation of a healthful environment.

Such interests impose obligations beyond those of ordinary commerce. They impose grave social responsibility and a patriotic duty to which Realtors should dedicate themselves, and for which they should be diligent in preparing themselves. Realtors, therefore, are zealous to maintain and improve the standards of their calling and share with their fellow Realtors a common responsibility for its integrity and honor. The term Realtor has come to connote competency, fairness, and high integrity resulting from adherence to a lofty ideal of moral conduct in business relations. No inducement of profit and no instruction from clients ever can justify departure from this ideal.

In the interpretation of this obligation, Realtors can take no safer guide than that which has been handed down through the centuries, embodied in the Golden Rule, "Whatsoever ye would that others should do to you, do ye even to them."

Accepting this standard as their own, Realtors pledge to observe its spirit in all their activities and to conduct their business in accordance with the tenets set forth below.

Articles 1 through 5 are aspirational and establish ideals Realtors should strive to attain.

ARTICLE 1

Realtors should become and remain informed on matters affecting real estate in their community, the state, and nation so that they may be able to contribute responsibly to public thinking on such matters.

ARTICLE 2

In justice to those who place their interests in a real estate professional's care, Realtors should endeavor always to be informed regarding laws, proposed legislation, governmental regulations, public policies, and current market conditions in order to be in a position to advise their clients properly.

ARTICLE 3

Realtors should endeavor to eliminate in their communities any practices which could be damaging to the public or bring discredit to the real estate professional. Realtors should assist the governmental agency charged with regulating the practices of brokers and sales licensees in their states. (Amended 11/87)

ARTICLE 4

To prevent dissension and misunderstanding and to assure better service to the owner, Realtors should urge the exclusive listing of property unless contrary to the best interest of the owner. (Amended 11/87)

ARTICLE 5

In the best interests of society, of their associates, and their own businesses, Realtors should willingly share with

other Realtors the lessons of their experience and study for the benefit of the public, and should be loyal to the Board of Realtors of their community and active in its work.

Articles 6 through 23 establish specific obligations. Failure to observe these requirements subject Realtors to disciplinary action.

ARTICLE 6

Realtors shall seek no unfair advantage over other Realtors and shall conduct their business so as to avoid controversies with other Realtors. (Amended 11/87)

ARTICLE 7

In accepting employment as an agent, Realtors pledge themselves to protect and promote the interests of the client. This obligation of absolute fidelity to the client's interests is primary, but it does not relieve Realtors of the obligation to treat fairly all parties to the transaction.

ARTICLE 8

Realtors shall not accept compensation from more than one party, even if permitted by law, without the full knowledge of all parties to the transaction.

ARTICLE 9

Realtors shall avoid exaggeration, misrepresentation, or concealment of pertinent facts relating to the property or the transaction. Realtors shall not, however, be obligated to discover latent defects in the property or to advise on matters outside the scope of their real estate license. (Amended 11/86)

ARTICLE 10

Realtors shall not deny equal professional services to any person for reasons of race, color, religion, sex, handicap, familial status, or national origin. Realtors shall not be

parties to any plan or agreement to discriminate against a person or persons on the basis of race, color, religion, sex, handicap, familial status, or national origin. (Amended 11/89)

ARTICLE 11

Realtors are expected to provide a level of competent service in keeping with the standards of practice in those fields in which the Realtor customarily engages.

Realtors shall not undertake to provide specialized professional services concerning a type of property or service that is outside their field of competence unless they engage the assistance of one who is competent on such types of property or services, or unless the facts are fully disclosed to the client. Any persons engaged to provide such assistance shall be so identified to the client and their contribution to the assignment should be set forth.

Realtors shall refer to the Standards or Practice of the National Association as to the degree of competence that a client has a right to expect the Realtor to possess, taking into consideration the complexity of the problem, the availability of expert assistance, and the opportunities for experience available to the Realtor.

ARTICLE 12

Realtors shall not undertake to provide professional services concerning a property or its value where they have a present or contemplated interest unless such interest is specifically disclosed to all affected parties.

ARTICLE 13

Realtors shall not acquire an interest in or buy or present offers from themselves, any member of their immediate families, their firms or any member thereof, or any entities in which they have any ownership interest, any real property without making their true position known to the owner or the owner's agent. In selling property

they own, or in which they have any interest, Realtors shall reveal their ownership or interest in writing to the purchaser or the purchaser's representative. (Amended 11/90)

ARTICLE 14

In the event of a controversy between Realtors associated with different firms, arising out of their relationship as Realtors, the Realtors shall submit the dispute to arbitration in accordance with the regulations of their Board or Boards rather than litigate the matter.

ARTICLE 15

If charged with unethical practice or asked to present evidence or to cooperate in any other way, in any disciplinary proceeding or investigation, Realtors shall place all pertinent facts before the proper tribunals of the Member Board or affiliated institute, society, or council in which membership is held and shall take not action to disrupt or obstruct such processes. (Amended 11/89)

ARTICLE 16

When acting as agents, Realtors shall not accept any commission, rebate, or profit on expenditures made for their principal, without the principal's knowledge and consent. (Amended 11/91)

ARTICLE 17

Realtors shall not engage in activities that constitute the unauthorized practice of law and shall recommend that legal counsel be obtained when the interest of any party to the transaction requires it.

ARTICLE 18

Realtors shall keep in a special account in an appropriate financial institution, separated from their own funds, monies coming into their possession in trust for other persons, such as escrows, trust funds, clients' monies, and other like items.

ARTICLE 19

Realtors shall be careful at all times to present a true picture in their advertising and representations to the public. Realtors shall also ensure that their status as brokers or Realtors is clearly identifiable in any such advertising. (Amended 11/86)

ARTICLE 20

Realtors for the protection of all parties, shall see that financial obligations and commitments regarding real estate transactions are in writing, expressing the exact agreement of the parties. A copy of each agreement shall be furnished to each party upon their signing such agreement.

ARTICLES 21

Realtors shall not engage in any practice or take any action inconsistent with the agency of other Realtors.

ARTICLE 22

In the sale of property which is exclusively listed with a Realtor, Realtors shall utilize the services of other brokers upon mutually agreed upon terms when it is in the best interests of the client.

Negotiations concerning property which is listed exclusively shall be carried on with the listing broker, not with the owner, except with the consent of the listing broker.

ARTICLE 23

Realtors shall not knowingly or recklessly make false or misleading statements about competitors, their businesses, or their business practices. (Amended 11/91)

The Code of Ethics was adopted in 1913. Amended at the Annual Convention in 1924, 1928, 1950, 1951, 1952, 1955, 1956, 1961, 1962, 1974, 1982, 1986, 1987, 1989, 1990 and 1991.